Supreme Court, U.S.
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10-632 OCT 15 2010

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

In re WILLIAM M. WINDSOR

WILLIAM M. WINDSOR,
Petitioner

v.

UNITED STATES OF AMERICA, JUDGE ORINDA D. EVANS, HAWKINS & PARNELL, LLP, CARL HUGO ANDERSON, PHILLIPS LYTLE, LLP, CHRISTOPHER M. GLYNN, TIMOTHY P. RUDDY ROBERT J. SCHUL, JUDITH L. BERRY, MAID OF THE MIST CORPORATION, MAID OF THE MIST STEAMBOAT COMPANY, LTD., SANDRA CARLSON, MARC W. BROWN, ARTHUR RUSS. AND DOES 1 TO 100,
Respondent

On Petition for Writ of Mandamus
To The United States Court of Appeals for The Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Windsor is seeking a Petition for Writ of Mandamus to disqualify United States District Court Judge William S. Duffey, Jr. from presiding in any civil actions involving Windsor. Windsor seeks this relief pursuant to Supreme Court Rule 20 as authorized by 28 U.S.C.§1651(a).

1. Based upon the following facts: The Petitioner is a normal, 62 year old man, husband of 39 years, father, grandfather, corporate executive who has never been arrested. He is perfectly sane, highly intelligent, worked as a CEO for both Goldman Sachs and Bain Capital running significant companies, and does not have an evil bone in his body. The Petitioner and the judge had never heard of each other when the judge was asked to quash a subpoena for a deposition of a fellow judge. Based solely on affidavits from the Petitioner, the judge issued an order describing the Petitioner as "scurrilous and irresponsible."

   The question presented is:

   Whether the judge proclaiming that the Petitioner is

   evil and mentally and financially incapable

   will cause reasonable people to feel the judge's impartiality might reasonably be questioned

in a subsequent legal action involving the Petitioner.

If so, the judge must be disqualified.

2. Whether many courts are wrong in continuing to claim extrajudicial bias is required for recusal.

3. Whether pervasive bias justified recusal.

4. Whether the federal courts in Atlanta, Georgia should be allowed to ignore the facts and the law.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 Petitioner states the following:

This petition is filed on behalf of an individual.

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[1] The Appendix is provided in three volumes – Appendix Volume 1, 2, and 3. The exhibits to the affidavits provided herein have not been included in this Appendix due to the volume. If this Court wants to see the exhibits, the Petitioner can easily provide them.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is provided in Volume 3 of the Appendix to the Petition ("Pet.App.") at 324.

JURISDICTION

This Court is authorized to issue a Writ of Mandamus pursuant to 28 U.S.C.§1651(a) in aid of its respective jurisdiction under 28 U.S.C.§1254.

STATUTES INVOLVED

This case involves 28 U.S.C.§144, 28 U.S.C.§455, the United States Constitution and the First, Fifth, Sixth, Eighth and Fourteenth Amendments, the Code of Judicial Conduct, and the Court's Inherent Powers.

STATEMENT OF THE CASE

A. Jurisdiction Below

The United States District Court for the Northern District of Georgia has subject matter jurisdiction over Civil Action No.1:09-CV-02027-WSD ("MIST-2") and Civil Action No.1:09-CV-01543-WSD ("Deposition_Action") pursuant to 28 U.S.C.§1331, which confers original jurisdiction for actions arising under the laws of the United States and 28 U.S.C.§1367, which confers jurisdiction ancillary to this District Court's original exercise of jurisdiction in ***Maid of the Mist v. Alcatraz***, Civil Action No.1:06-CV-0714-ODE ("MIST-1") [2]

The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to the All Writs Act, 28 U.S.C.§1651(a).

B. Statement of Facts[3]

This is a request for a writ of mandamus to be issued by this Court directing that Judge William S. Duffey, Judge of the United States District Court for

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[2] Citations are provided herein to three dockets. Civil Action No.1:06-CV-0714-ODE is "MIST-1." Civil Action No.1:09-CV-01543-WSD is the "Deposition_Action." Civil Action No.1:09-CV-02027-WSD is "MIST-2," the underlying action in this petition.

[3] These facts are uncontroverted. This "Statement of Facts" is supported by sworn affidavits that have been filed in 2009 and 2010 by the Petitioner. None of this has been disputed in any manner by affidavits or testimony of any of the Defendants in any civil action.

the Northern District of Georgia ("Judge Duffey"), be disqualified from presiding in any civil action involving Windsor.

In August 2005, Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd. (jointly "Maid") filed a civil action against Alcatraz Media, LLC, Alcatraz Media, Inc. (jointly "Alcatraz") and William M. Windsor ("Windsor" or the "Petitioner") (Alcatraz and Windsor jointly "A&W.") The action was filed in Gwinnett County Georgia Court. It was removed to the United States District Court for the Northern District of Georgia in March 2006 as Civil Action No.1:06-CV-0714-ODE ("MIST-1"). The action was assigned to Judge Orinda D. Evans ("Judge Evans.")[4]

Judge Evans granted a summary judgment to Maid on tortious interference with alleged damages of less than $100, though (1) A&W provided sworn affidavits from the four customers involved who allegedly did not spend $100, and each swore that they did buy tickets from Maid, so there were no damages, and (2) the only sworn testimony before the court was that there was an oral contract breached by Maid, and thus there was no tortious interference by Alcatraz.

A&W swore under oath at all times that Maid made up all of the sworn claims in the Verified Complaint and motion for injunctive relief in MIST-1. Judge Evans refused to even consider A&W's charges of perjury, false sworn pleadings, and Rule 11

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[4] MIST-1_Doc.1.

violations by Maid and Maid's attorneys. The Petitioner documented all the lies with citations to the record, and most of the lies have been proven with the sworn testimony of the Maid managers.

A&W reached an out-of-court settlement with Maid in December 2008 to stop the legal expense in MIST-1 at approximately $1,000,000. (Yes, it cost A&W over one million dollars in legal fees on a bogus claim of $100 in damages.) A&W refused to provide and did not provide general releases to Maid or Maid's Attorneys.

In April 2009, the Petitioner began efforts to reopen the case pursuant to FRCP Rule 60(b) primarily due to fraud upon the courts. A major factor was the discovery of new evidence that had been concealed from A&W by Maid and Judge Evans.[5]

On June 3, 2009, the U.S. Attorney representing Judge Evans filed a motion to quash a subpoena for the deposition of Judge Evans in MIST-1. [Pet.App.171--Mandamus Affidavit #1--"M-Aff #1",¶39.] [6] [Deposition_Action Doc.1.][7]

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[5] MIST-1_Docs.361 and 362.

[6] The Mandamus Affidavit of William M. Windsor is on pages 161-185 in the Appendix (Pet.App.). "M-Aff #" is the abbreviation used for this affidavit herein. "Doc." is the abbreviation for Docket used herein.

[7] "Pet.App. ###" indicates page number in the Appendix to this Petition for Writ of Mandamus.

The motion was referred to Judge Duffey, and this created Civil Action 1:09-CV-01543-WSD.[8]

Judge Duffey had never had any dealings with the Petitioner prior to the referral of the motion to quash. The Petitioner had never heard the name "Judge William S. Duffey" either. There was no conference held, and there was no hearing held, despite the Petitioner's motions requesting both.[9]

On June 8, 2009, Judge Duffey stayed the properly subpoenaed deposition.[10] Judge Duffey made a number of false statements in the stay order.[11] The order was totally pro-Judge Evans, and it first indicated that Judge Duffey was biased.[12]

On June 10, 2009, the U.S. Attorney supplemented Judge Evans' motion to quash.[13]

On June 18, 2009, the Petitioner filed a Motion for Reconsideration of the Order Staying Case and the Twenty-Ninth Declaration of William M. Windsor (Dec #29).[14][15] This was filed to note errors in Judge Duffey's order.[16]

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[8] Pet.App.171--M-Aff #1,¶40.
[9] Pet.App.171--M-Aff #1,¶41.
[10] Deposition_Action_Doc.4; Pet.App.172--M-Aff #1, ¶42.
[11] Pet.App.161-170,190-191, Affidavit of Prejudice ¶¶34-67 and 118-121.
[12] Pet.App.172--M-Aff #1,¶43.
[13] Deposition_Action_Doc.8; Pet.App.127--M-Aff #1,¶45.
[14] Declarations and affidavits of William M. Windsor have been numbered. "Dec #__" is used as the abbreviation for each. Dec #5 is the Fifth, Dec #34 is the Thirty-Fourth, etc.
[15] Deposition_Action_Doc.15.
[16] Pet.App.172--M-Aff #1,¶47.

On June 22, 2009, the Petitioner filed a Response to the Motion to Quash and Dec #35.[17]

On June 22, 2009, the Petitioner also filed a Response to the Motion to Supplement Motion to Quash and the Thirty-Fourth Declaration of William M. Windsor ("Dec #34").[18]

On June 30, 2009, an Order to Quash the Deposition of Judge Evans was issued by Judge Duffey.[19][20] The order described the Petitioner as "scurrilous and irresponsible."

This was written by a man who did not know the Petitioner, had never even seen him, and who made such a statement and decision based solely on the Petitioner's three uncontroverted sworn affidavits. In 2009, there were zero (0) affidavits filed by Maid in MIST-1, the Deposition Action, or MIST-2. The Petitioner's testimony and evidence stood alone as the record before the court.[21] There was no evidence before Judge Duffey to allow him to make such a biased slur.

As detailed in the Pet.App. on pages 73-76, the Petitioner is not scurrilous and irresponsible.

The only explanation for this slander is that Judge Duffey was predisposed to bias against the

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[17] Deposition_Action_Doc.21; Pet.App.172--M-Aff #1,¶49.
[18] Deposition_Action_Doc.24; Pet.App.173--M-Aff #1,¶50.
[19] Deposition_Action_Doc.32.
[20] Pet.App.24.
[21] Pet.App.173--M-Aff #1,¶51.

Petitioner because he had the audacity to try to depose Judge Evans to obtain information to prove fraud upon the court that was available only from Judge Evans that the Petitioner desperately needed to reopen the case in MIST-1.[22]

There is nothing scurrilous and irresponsible in the three affidavits that Judge Duffey had before him when he entered the June 30, 2009 order – Dec #29, Dec #35, and Dec #34. The statements made therein are no different than the statements made herein. Judge Evans had made as many as 200 false statements in two orders in MIST-1. She knew statements that she made in her orders were false. She obstructed justice by concealing documents from the Petitioner. These are facts, proven with evidence that the Petitioner has filed in each of the three civil actions.

On July 27, 2009, the Petitioner filed a complaint to begin MIST-2, an independent action in equity for fraud upon the court and RICO.[23]

On July 28, 2009, when the Petitioner was told by the District Court Clerk's Office that Judge Duffey would be presiding in MIST-2, the Petitioner immediately went home and prepared a Motion to Recuse Judge Duffey and a Motion for Change of Venue. He returned later in the day and filed.[24]

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[22] Pet.App.173–M-Aff#1,¶51.
[23] Pet.App.173-174,¶53; MIST-2_Doc.1.
[24] MIST-2_Docs.15 and 17; Pet.App.174--M-Aff #1,¶55.

On July 30, 2009, a TRO Hearing was held. Judge Duffey denied the motion.[25] Judge Duffey distributed an order on the Petitioner's motions regarding service of process on Canadian defendants, representation, motion to change venue, and motion to recuse. All were denied.[26]

Judge Duffey was antagonistic and biased in the hearing. Details of this are provided in Pet.App. 54-70 and are shown in the Transcript of the Temporary Restraining Order Hearing.[27] False statements in the July 30, 2009 order are listed in the Affidavit of Prejudice.[28]

On August 4, 2009, the Petitioner filed an Emergency Motion to Recuse Judge Duffey. The Petitioner advised Judge Duffey that he would seek a Writ of Mandamus if there was not a prompt response. This motion appears on the MIST-2 Docket as a "Motion for Leave" because Judge Duffey ordered that the Petitioner must first submit proposed motions to him with a request for approval to file.[29] This motion was pursuant to 28 U.S.C.§144. The filing included an Affidavit of Prejudice[30] and a 28 U.S.C.§144 Certificate of Good Faith.[31]

On August 10, 2009, the Petitioner filed a Petition for a Writ of Mandamus with the Eleventh

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[25] MIST-2_Doc.31.
[26] Pet.App.19; Pet.App.174--M-Aff #1,¶56; MIST-2_Doc.22.
[27] MIST-2_Doc.48; Pet.App.174,¶56.
[28] Pet.App.71-77, ¶¶121-141; Pet.App.174--M-Aff #1,¶56.
[29] MIST-2_Doc.36.
[30] Pet.App.161.
[31] Pet.App.114; Pet.App.174-175--M-Aff #1,¶57.

Circuit seeking to have Judge Duffey disqualified.[32] The Affidavit of Prejudice[33] and a 28 U.S.C.§144 Certificate of Good Faith[34] were included as exhibits.

On September 8, 2009, the Petitioner filed a Reply to Opposition to Emergency Motion to Recuse Judge Duffey.[35]

On September 17, 2009, the Eleventh Circuit denied the Petition for a Writ of Mandamus.[36]

On October 26, 2009, the Petitioner filed a Request for Specific Approval to file Notice of Intent to Appeal to the United States Supreme Court.[37]

On November 2, 2009, Judge Duffey granted permission for the Petitioner to file an appeal to this Court. The requirement of filing Requests for Approval before anything can be filed was made by Judge Duffey in his order dated July 30, 2009. The Petitioner filed a Petition for Writ of Certiorari within 90 days from the order granting approval by the District Court.[38] The Petition was rejected due to being more than 90 days from the order of the Eleventh Circuit. The Petitioner called The Supreme Court Clerk's office prior to filing to ask if the time for filing was 90 days from the order granting permission to file. The Petitioner was

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[32] Pet.App.116.
[33] Pet.App.161
[34] Pet.App.114.
[35] Mist-2_Doc.1.
[36] Pet.App.4.
[37] Pet.App.186.
[38] Pet.App.3 and 18.

advised to include a letter explaining the situation, which he did.

Windsor had also appealed the orders entered by Judge Duffey on September 25, 2009 and October 20, 2009. An order was issued by the Eleventh Circuit dismissing the appeal for lack of jurisdiction.[39] The Petitioner is filing this Petition for Writ of Mandamus as Judge Duffey cannot be allowed to preside with demonstrated bias.

Judge Duffey has demonstrated pervasive bias ever since he called Windsor "scurrilous and irresponsible." Word limits in this Petition do not allow Windsor to detail everything. Judge Duffey's has shown pervasive bias through many improper actions. He intentionally made absolute false statements in orders to damage Windsor and protect Judge Evans and others. He used a wide variety of techniques to block Windsor's access to the two documents that will prove fraud upon the court and obstruction of justice. He denied Windsor's access to the courts by implementing filing restrictions without notice and without the opportunity to be heard. In the Deposition_Action, Judge Duffey has ignored five motions filed by Windsor in July and August 2010 including a motion for recusal filed on July 21, 2010 (Deposition_Action Doc. 65).

On September 23, 2010, Windsor had a courier deliver several motions to the Clerk's office for filing. Though there was no restriction of any type on filing in Civil Action No. 1:09-CV-01543-

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[39] Pet.App.A.

WSD, the Clerk refused to file them. The Clerk, Miss Anniva Sanders, told Windsor that she had been advised "by Chambers" to refuse to file the motions.

Windsor spoke to Ms. Jessica Birnbaum who advised him that Judge Duffey issued an "oral order" requiring that Windsor first seek request for specific approval before filing anything. The excuse was that Windsor had requested a stay due to medical problems, and the case was closed. As the court Docket shows, the Plaintiffs were allowed to file Docket Nos. 55, 56, 75, 76, 77, 82, 83, and 84 between June 17 and September 3, 2010 after the case was closed, while Windsor was having eye surgeries, and without any requirement to request specific approval to file. The Docket also shows that Windsor's motions for stay Docket 63 (July 19, 2010), Docket 79 (August 6, 2010), Docket 80 (August 26, 2010) were ignored by Judge Duffey. This demonstrates the bias of Judge Duffey.

Since September 23, 2010, Judge Duffey has failed to grant his approval for the filing of 10 motions, including two motions for stays due to medical emergency, a motion for a conference, and a motion for a hearing. There is no reason to block the filing of any of these motions.

In MIST-2, Judge Duffey has granted every request for specific approval filed by the Defendants. He has denied nine of Windsor's requests for specific approval to file, including a motion to strike false statements made by the attorney for most of the defendants [MIST-2_Doc.57]; a request for a

conference [MIST-2_Doc.113]; three requests on stays due to medical emergency [MIST-2_Docs.139-144-157]; a request to file a Verified Complaint of Professional Misconduct Against the Attorney Defendants [MIST-2_Doc.158]; and a request to file an affidavit that provided complete proof of most of Windsor's claims in his Verified Complaint [MIST-2_Doc.159]. Judge Duffey has completely ignored 18 requests for specific approval to file by Windsor, including filing of proofs of service [MIST-2_Docs.54-60]; motion to strike the answer of Defendants [MIST-2_Doc.119]; motion to file brief on judicial immunity [MIST-2_Doc.123]; motion form the Court to take judicial notice of the evidence in related cases [MIST-2_Doc.125]; and a motion to name DOE Defendants [MIST-2_Doc.146].

Orders have been issued by Judge Duffey that have ignored the facts, ignored the law, cited erroneous case law, cited case law that does not support the subject of the citation. Orders have been issued that contained false statements and perjury.

As justification for denying MIST-2_Doc.144, Motion for Extension of Time; Motion for Discovery; Motion for In Camera Review; and Motion for Hearing and granting motions to dismiss, Judge Duffey claimed Windsor did not submit to him a required report on his medical status on September 1, 2010. This is absolutely false. The report is provided in Appendix 3, p.324, dated August 31, 2010 for delivery on September 1, 2010. In addition to this report, Windsor also reported on June 17; July 21 and 27; September 1, 10, 15, 23, and 30; and October 1, 7, 11, 15, 18, 19, 21. (Appendix 3, pp 326-

373.)

Judge Duffey dismissed the case under absolutely false pretenses. He did it while a stay order was in effect. He did it while ignoring the responses that Windsor timely filed on August 18, and he did it while refusing to file the evidence and legal arguments that Windsor had to submit as "requests for specific approval to file."

As part of the factual background, it is important to understand what took place before Judge Duffey entered the picture.

In MIST-1, four Maid managers committed hundreds of counts of perjury and committed a conspiracy to commit fraud. (See MIST-1_Doc.377.)[40]

Maid's managers and attorney, Mr. Carl Hugo Anderson, lied many hundreds of times. (See MIST-1_Doc.377–Exhibits_1-8,10-21 for each false statement and the proof of the falsity.)[41]

The lies, false sworn pleadings, false pleadings, and discovery abuse continued throughout MIST-1.

Maid and their attorneys used a deliberately planned unconscionable scheme to fraudulently subvert the integrity of the judicial process. Proof of the unconscionable scheme, and of its complete success to date, is conclusive in the Docket of MIST-1

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[40] Pet.App.175--M-Aff #1,¶59-60.
[41] Pet.App.176--M-Aff #1,¶62.

and MIST-2_Doc.1.[42] The many issues of professional misconduct are detailed in MIST-1_Doc.474 and Dec#25 (MIST-1_Doc.462).

The Petitioner filed motions for sanctions against Maid's attorneys that provide additional details of attorney misconduct. [MIST-1_Doc.363 and 364]. But Judge Evans ignored it all. She never allowed it to be discussed, and she refused repeated motions for hearings and conferences. In four years, Judge Evans has never granted the Petitioner a single conference or hearing. Never.

Judges are supposed to tell the truth at all times, but Judge Evans has made false statements routinely. Proof of the false statements in the orders has been documented in MIST-1_Doc.362 and 377 with citations to Maid's witnesses proving that many statements are false.[43]

These were material false statements made under the Judge's oath of office in a federal proceeding. Judge Evans knew statements that she made were false.[44]

Judge Evans ignored everything in MIST-1 from May until December 22, 2009 when she issued an order denying all pending motions en masse and enjoining the Petitioner from filing anything further

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[42] See MIST-1_Doc.474, Pet.App.176-M-Aff #1,¶63.
[43] MIST-1_Doc.377, Exhibits 9 and 22; see Pet.App.90-101, ¶¶189-264.
[44] MIST-1_Doc.174, P23: 24-25, P24: 1-7, P34: 4-7, P44: 6-8.

in any federal, state, or appellate court. Several appeals are pending at the Eleventh Circuit.

Judge Evans has committed obstruction of justice by withholding material evidence that should have been provided to A&W. Judge Evans received two contracts for an in camera inspection in February 2007. Judge Evans claimed the contracts were not relevant to the case, but that was false.

A&W finally obtained the contracts through a FOIL request in 2009, so the Petitioner knows that the contracts contained extremely important information, and the Petitioner is convinced that Maid filed bogus documents with Judge Evans. These documents are referenced in MIST-1_Doc.168, and the production requirement is noted in MIST-1_Doc.174 - Hearing of February 2, 2007, P 61-62. (See First Declaration of William M. Windsor -- Dec#1, ¶¶15-32 and Exhibits 1 and 2 thereto.)[45] Judge Evans refused to produce these documents after a subpoena, and she denied a motion to lift the seal without any justification whatsoever. These documents will prove that MIST-1 should be reopened. These documents will prove fraud. The Petitioner has no way to get the documents because Judge Evans is concealing them.

Judge Evans routinely ignored the facts and the law and even invented her own facts.[46] Judge Evans made rulings in MIST-1 that are contrary to the law. She granted a summary judgment for Maid

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[45] MIST-1_Doc.361.

[46] Pet.App.99, ¶245; Pet.App.178- M-Aff #1,¶78.

on the key issue in the case – an oral agreement for six months in 2005 -- based upon the following: Maid testified that its president was not aware of an agreement with Alcatraz. There was no other testimony from Maid other than this one statement in the Verified Complaint! Alcatraz provided a Verified Answer, multiple sworn affidavits, and extensive deposition testimony detailing the exact terms of the oral agreement from the people who made the oral agreement with Maid. This clearly created at least a fact issue that defeated summary judgment, but Judge Evans invented facts that weren't true and weren't in the record, ignored the truth, and claimed her facts trumped the A&W's sworn testimony. As there was a contract, there was no tortious interference, but there was breach of contract by Maid, and A&W should have won the case.[47]

Detailed background facts regarding the professional misconduct of Judge Evans are provided in Dec#23.[48] Dec#23 details what Judge Evans did throughout this case. Other violations are detailed in Dec#25.[49]

The worst of hardships have resulted from the dishonesty in this case. A&W have lost approximately $1,500,000.00, have been saddled with an injunction that is a violation of Georgia law, have been defamed, and have lost years of man hours fighting the injustice. Now others are unfairly using the erroneous decision in this case in litigation

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[47] MIST-2_Doc.1.
[48] MIST-1_Doc.406.
[49] MIST-1_Doc.462.

against Alcatraz in efforts to "void" O.C.G.A. 43-4B. To Alcatraz, the financial cost represents years of pre-tax profits. To the Petitioner, the financial cost represents money that this retiree expected to live on in retirement.[50]

Judge Duffey ignored all of the above when it was spelled out for him in precise detail in MIST-2. Details of the earliest wrongs ignored by Judge Duffey are provided in MIST2-Doc.1 and the Affidavit of Prejudice.[51] There has been much more since these were written.

In denying a Motion to Recuse, Judge Duffey stated that extrajudicial bias is required for recusal. On the Petition for Writ of Mandamus, the Eleventh Circuit also ruled: "Windsor has not shown bias stemming from an extra judicial source." But Judge Duffey's bias IS extrajudicial.

C. Petition for Writ of Mandamus

The Petitioner files this Petition for a Writ of Mandamus in order to compel the Eleventh Circuit and the United States District Court for the Northern District of Georgia to obey the law. The federal courts in Atlanta are in breach of the criminal statute on misprision of felony, among many others, and in breach of the Constitutional duty to take care of the faithful execution of the laws. The Petitioner respectfully requests that this Court order the Eleventh Circuit and the United

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[50] MIST-2_Doc.1.

[51] Pet.App.85-104,¶¶172-276.

States District Court for the Northern District of Georgia to disqualify Judge Duffey from presiding in any matters involving Windsor and to perform their duties under the Constitution and under the criminal statute on misprision of felony relating to MIST-2 and MIST-1.

REASONS FOR GRANTING THE PETITION

I. THE JUDGE MUST NOT BE ALLOWED TO CALL THE PETITIONER "EVIL AND MENTALLY AND FINANCIALLY INCAPABLE" AND THEN PRETEND TO BE IMPARTIAL. JUDGES MUST NOT BE ALLOWED TO USE THEIR BIAS TO DAMAGE A PARTY.

A reasonable person would question the impartiality of any judge who called a person evil and irresponsible.

The idea that Judge Duffey could call the Petitioner "scurrilous and irresponsible" and then claim to be impartial is ludicrous.

Besides being totally false, these words demonstrate extreme antagonism. There are not many things that one could say worse about another human being than to call him EVIL.

What makes Judge Duffey's words even more outrageous is that he used these words when the only evidence before the court was the sworn affidavits of the Petitioner under penalty of perjury.

The Petitioner's statements under oath were absolutely true, documented with citations to the record, and uncontroverted.[52]

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[52] Pet.App.42,¶38.

Judge Duffey's only other source of information was prejudice for his friend and next-door neighbor and bias against anyone who would have the audacity to attempt to depose a fellow judge.

A reasonable person would say that branding someone as "**scurrilous and irresponsible**" provides a textbook example of "impartiality might reasonably be questioned." How could anyone even dream that a judge could be impartial after publishing on the Internet for the world to see that **WINDSOR IS EVIL AND IRRESPONSIBLE**? No honest person could. The Petitioner has fairly and impartially presented the facts to normal people, and all say "lacks impartiality."[53]

Judges have been disqualified for far less.

> "It was in the course of these rulings that Judge Hauk made the remark that Gupta was a "bad apple." Because...Gupta had never previously appeared before the Judge, the Judge's opinion stemmed from an extrajudicial source. See ***Pau***, 928 F.2d at 885. Moreover, regardless of the merits of the rulings on the withdrawal of claim and other matters, the timing of Judge Hauk's remark indicates that he based the rulings on his negative opinion of Gupta." "Accordingly, Judge Hauk abused his discretion by failing to recuse himself." "We therefore reverse the judgment and remand this case for further

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[53] Pet.App.178–M.Aff#1,¶73.

proceedings before a different Judge. (***United States v. Real Property Located at 25445 Via Dona Christa***, 959 F.2d 243 (9th Cir. 04/10/1992).)

Judge Duffey must be disqualified.

II. THE "SCURRILOUS AND IRRESPONSIBLE" WORDS OF JUDGE DUFFEY CAME FROM AN EXTRAJUDICIAL SOURCE.

Judge Duffey did not know the Petitioner when he branded him "scurrilous and irresponsible."

Judge Duffey has demonstrated a bias against pro se parties and anyone who would take action against a fellow judge, his next-door neighbor.

Judge Duffey had a preconceived idea of MIST-2 from information that came from outside the case. Judge Duffey called the Petitioner "**scurrilous and irresponsible**" before MIST-2.

There are two forms of bias at work in MIST-2. Judge Duffey has a pervasive antagonistic bias against the Petitioner, and Judge Duffey has a pervasive bias in favor of Defendant Judge Evans. This is demonstrated in the Affidavit of Prejudice[54] and the Statement of Facts above.

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[54] Pet.App.85-104,¶¶172-276.

The bias comes from "outside of the courtroom." While the prejudice against pro se parties may have come from Judge Duffey's experience as a judge or as an attorney, this prejudice did not emanate from in-courtroom experience with the Petitioner.

Judge Duffey's prejudice for Judge Evans is similarly "extrajudicial." While the prejudice undoubtedly comes from his personal relationship with his friend and next-door neighbor, Judge Evans, the prejudice did not come from an in-courtroom experience with the Petitioner.

The bias manifested itself in an order issued by Judge Duffey in a prior proceeding on June 30, 2009 when the only admissible facts before him were the Petitioner's sworn affidavits.[55]

This means Judge Duffey decided the Petitioner was scurrilous and irresponsible for telling the truth under oath under penalty of perjury before a notary!

Justice Scalia has stated that so-called "extrajudicial bias" includes earlier judicial proceedings by the same judge:

> "Douglas' use of the term 'extrajudicial' in ***U.S. v. Grinnell Corp.*** 384 U.S. 563 (1966) simply meant 'a source outside the judicial proceeding at hand – which would include as

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[55] Pet.App.24.

> extrajudicial sources earlier judicial proceedings conducted by the same judge...."' (***Liteky v. United States***, 510 U.S. 540 at 551, 114 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994).)

Judge Duffey acquired a dislike for the Petitioner because of events outside the instant case. According to ***Liteky***, this is "extrajudicial," yet the Eleventh Circuit ruled it was not extrajudicial. [Pet.App._5.] The District Court ruled it was not extrajudicial. [Pet.App._16.]

The Petitioner identified legal and factual errors in the Deposition Action that that gave rise to an inference of bias. Scurrilous and irresponsible should be enough, but there is more.[56]

III. THE AVERAGE REASONABLE PERSON WOULD DOUBT THAT JUDGE DUFFEY COULD BE IMPARTIAL.

The impartiality of Judge Duffey must be questioned.

Judge Duffey simply cannot slander Windsor as "scurrilous and irresponsible" and then pretend he can be impartial as he has done. This is outrageous!

The standard for review in recusal is not what Judge Duffey thinks; it is what <u>reasonable</u> <u>people</u> think.

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[56] Pet.App.41-54,¶¶34-80 and Pet.App.70-71,¶¶118-121.

"'A party seeking recusal need not show actual bias on the part of the court, only the possibility of bias . . . Under§455(a), if a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality under the applicable standard, then the judge must recuse.'" *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 167 (3d Cir. 2004) (quoting *Krell v. Prudential Ins. Co. of Am.* (*In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*), 148 F.3d 283, 343 (3d Cir. 1998)). Moreover, a judge is required to disqualify himself when "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C.§455(b)(1). Bias and prejudice "connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree." *Liteky v. United States*, 510 U.S. 540, 550 (1994).

"Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *Withrow v. Larkin*, 421 U. S. 35, 47 (1975). Applying those precedents, we find that, in all the circumstances of this case, due process

requires recusal." (***Caperton v. A. T. Massey Coal Co., Inc.***, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (U.S. 06/08/2009).)

As required by 28 U.S.C.§144, the Petitioner provided an Affidavit of Prejudice.[57] It contains factual details of the prejudice.

> "The probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable;" (***Berger v. United States***, 255 U.S. 22, (1921), 41 S.Ct. 230, 65 L.Ed. 481 1921)

If a clerk goes out into public and asks 100 people whether a judge who called someone evil and mentally and financially incapable might be impartial if that person later appeared as a party in his court, the result will be overwhelming that the impartiality must be questioned. The Petitioner has done so and knows.

SCURRILOUS is defined as EVIL; using or given to coarse language; vulgar. IRRESPONSIBLE is defined in legal terms as NOT MENTALLY OR FINANCIALLY FIT TO ASSUME RESPONSIBILITY.[58]

SO, JUDGE DUFFEY BRANDED THE PETITIONER AS EVIL and NOT MENTALLY OR FINANCIALLY FIT TO ASSUME RESPONSIBILITY *before* MIST-2 was assigned to

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[57] Pet.App.35-113.

[58] Pet.App.179--M-Aff #1,¶¶75-76.

him, and he had it published it on the Internet for all to see.[59]

Judge Duffey made this statement after allegedly reading facts in affidavits presented by the Petitioner. There was no affidavit from Maid, Judge Evans, or from anyone on behalf of Judge Evans, and there were absolutely no facts for Judge Evans before Judge Duffey 52 days before MIST-2 was filed and assigned to Judge Duffey. Judge Duffey completely ignored the facts.[60]

Judge Duffey has demonstrated to the Petitioner that he has a deep-seated personal bias and antagonism against the Petitioner and anyone who would have the audacity to sue a federal judge. The Petitioner provided proof of perjury and obstruction of justice by Judge Evans. Proof is detailed in Dec #25 – MIST-1_Doc.462. The "charges" are detailed in the Verified Action [MIST-2_Doc.1]. The Petitioner's claims have not been controverted by Judge Evans, and it will be impossible for her to do so because the Petitioner has the PROOF.[61]

Judge Duffey has demonstrated pervasive bias throughout the short proceeding in MIST-2; he has not demonstrated the impartiality required of a judge. The orders issued by Judge Duffey and his comments at the TRO Hearing show this. Taken alone, the orders would not be sufficient to

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[59] Pet.App.179,¶77.
[60] Pet.App.179--M-Aff #1,¶78.
[61] Pet.App.179--M-Aff #1,¶79.

demonstrate bias, but when you start with a "scurrilous and irresponsible" mindset, hear how antagonistic Judge Duffey was at the TRO Hearing, and see how he became an advocate for the Defendants, the pervasive bias is clear.[62]

Judge Duffey's void of impartiality in this matter has already prejudiced the case against the Petitioner. Judge Duffey has made biased rulings. Judge Duffey is not allowing motions to be filed or considered properly. Judge Duffey has "enacted" changes to FRCP rules that disadvantage the Petitioner. Judge Duffey established deadlines that seriously compromised the Petitioner.[63]

IV. THERE IS EXTRAJUDICAL BIAS IN THIS CASE, BUT THE LOWER COURTS WERE WRONG TO RULE THAT THERE WAS NONE AND THAT EXTRAJUDICIAL BIAS WAS REQUIRED.

The cases cited by the Eleventh Circuit to support its order denying Mandamus are ***Liteky v. United States***, ***Loranger v. Stierheim***, and ***United States v. Chandler***. These cases do not justify the ruling of the Eleventh Circuit.

The Eleventh Circuit claims *Liteky* says bias must come from an extra-judicial source.

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[62] Pet.App.180--M-Aff #1,¶82.
[63] Pet.App.184--M-Aff #1,¶100.

BUT, ***Liteky v. US*** actually says that the source of the impartiality of the court need not necessarily stem from an extra-judicial source:

> "It is wrong in theory...to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one, since it is not the exclusive reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. ***Liteky v. United States***, 510 U.S. 540, 554-55, 114 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994).
>
> "The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a necessary condition for 'bias or prejudice' recusal...." (***Liteky***, at 554.) Indeed, ***Liteky*** noted approvingly the Court's earlier ruling in ***Berger v. United States***, supra, requiring recusal on the basis of judicial remarks made in a prior proceeding. ***Liteky v. United States***, supra.)

Loranger v. Stierheim, 10 F.3d 776, 780 (11th Cir. 1994) makes no specific pronouncement that bias must be extrajudicial. It uses the term "generally" and ordinarily."

> "Generally, a judge's rulings in a case are not valid grounds for recusal." ***Loranger***, 10 F.3d at 780.

In ***Loranger***, the complaints about the trial judge were complaints about the judge's timeliness and rulings. This is not anywhere near the level of scurrilous and irresponsible.

The Eleventh Circuit also relied on ***United States v. Chandler***:

> "Likewise, a judge's rulings in a related case may not ordinarily serve as the basis for recusal." ***United States v. Chandler***, 996 F.2d 1073, 1104 (11th Cir. 1993).

United States v. Chandler is really off base. Compare the words of the judge in ***United States v. Chandler*** to the words of Judge Duffey:

> DISTRICT COURT JUDGE IN ***CHANDLER***: "...based on the evidence the court has heard during the trial of [Chandler's] co-defendants, this court is satisfied that the government has properly exercised prosecutorial discretion in not also seeking the death penalty for [Jarrell]. Jarrell was an alcoholic lackey for Chandler who for $500, or maybe simply a fifth of liquor, likely would have done anything Chandler directed him to do."
>
> JUDGE DUFFEY IN ***WINDSOR V. UNITED STATES***: Windsor is scurrilous and irresponsible.

DISTRICT COURT JUDGE IN *CHANDLER*: Comment made at the conclusion of a trial.

JUDGE DUFFEY IN *WINDSOR V. UNITED STATES*: Comment made before Judge Duffey met Windsor or any of the parties and after reading sworn affidavits from Windsor with no other evidence in the record before the court.

Chandler was actually quoting from ***McWhorter v. City of Birmingham***, 906 F.2d 674, 678 (11th Cir. 1990).

McWhorter was decided by the Eleventh Circuit in 1990. ***Liteky*** was decided by the Supreme Court in 1994.

Chandler does not apply, yet the Eleventh Circuit falsely claimed that it does:

> "Here, Windsor has not shown bias stemming from an extra-judicial source. Rather, his claims of bias and prejudice are based on adverse rulings made by the district court in a related case, which are not valid grounds for recusal. ***Chandler***, 996 F.2d at 1104." [64]

The Petitioner provided detailed arguments and case law in his filings with the District Court and the Eleventh Circuit.

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[64] Pet.App.7.

Judge Duffey and the Eleventh Circuit erroneously ignored this Court's position on extra-judicial bias. The distinction of whether actions or comments are categorized as "extra-judicial" is not the determining factor as lower courts continually claim.

Action, Accountability, and the Judiciary -- United States Federal Judicial Recusal Reform In a New Century by Brian Downing (2001) discusses the "extra-judicial" concept and explains that it was a mistake.

Liteky explained what this Court intended as far as bias, but the decisions of the lower courts seem to indicate that the courts haven't gotten the message. (*Liteky v. U.S.*, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (U.S. 03/07/1994).) *Liteky*:

> "The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a necessary condition for "bias or prejudice" recusal."
>
> "...neither the presence of an extra-judicial source necessarily establishes bias, nor the absence of an extra-judicial source necessarily precludes bias...."
>
> "...opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a

deep-seated favoritism or antagonism that would make fair judgment impossible."

"...there is no per se rule requiring that the alleged partiality arise from an extra-judicial source." [emphasis added.]

"Grinnell, therefore, provides a less than satisfactory rationale for reading the extra-judicial source doctrine into§144 or the disqualification statutes at issue here. It should come as little surprise, then, that the Court does not enlist Grinnell to support its adoption of the doctrine."

"...prejudiced opinions based upon matters disclosed at trial may rise to the level where recusal is required."

"From this, the Court is correct to conclude that an allegation concerning some extra-judicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes."

"A judge may find it difficult to put aside views formed during some earlier proceeding. In that instance we would expect the judge to heed the judicial oath and step down...."

"In matters of ethics, appearance and reality often converge as one. See ***Offutt v. United States***, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954) ("Justice must satisfy the appearance of justice"); ***Ex parte McCarthy***,

[1924] 1 KB 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. ***Marshall v. Jerrico, Inc.***,446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980) (noting the importance of "preserving both the appearance and reality of fairness," which " 'generates the feeling, so important to a popular government, that justice has been done' ") (quoting ***Joint Anti-Fascist Refugee Comm. v. McGrath***,341 U.S. 123, 172, 95 L. Ed. 817, 71 S. Ct. 624 (1951) (Frankfurter, J., concurring))."

"Although the source of an alleged disqualification may be relevant in determining whether there is a reasonable appearance of impartiality, that determination can be explained in a straightforward manner without resort to a nearly dispositive extra-judicial source factor. I would apply the statute as written to all charges of partiality, extra-judicial or otherwise, secure in my view that district and appellate judges possess the wisdom and good sense to distinguish substantial from insufficient allegations and that our rules, as so interpreted, are sufficient to correct the occasional departure."

Judge Duffey established his malice and bias for the Petitioner in an earlier proceeding. This

qualified as extrajudicial bias, but bias is bias, and when a party does not have an impartial judge, his Constitutional rights have been violated. The District Court and the Eleventh Circuit erred when they ruled that extra-judicial bias was required.

V. THE RULINGS OF THE ELEVENTH CIRCUIT (AND OTHER CIRCUITS) ON EXTRAJUDICIAL BIAS ARE IN CONFLICT WITH A DECISION OF THE SUPREME COURT.

The Supreme Court expressed in 1994 that the source of impartiality by a judge need not necessarily stem from an extrajudicial source.

> "It is wrong in theory...to suggest, as many opinions have, that 'extrajudicial source' is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one, since it is not the exclusive reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (***Liteky v US***, supra.)

Despite the Supreme Court ruling in ***Liteky*** in 1994, lower courts continue to erroneously require extrajudicial bias.

District Courts within the 2nd Circuit continue to erroneously cite ***United States v. Grinnell Corp.***, 384 U.S. 563, 583, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966) requiring extrajudicial bias. (***United States v. Carlton***, No. 07-2344-cr (2d Cir. 07/16/2008).)

District courts within the 3rd Circuit continue to rule "To warrant recusal under§144, the motion and affidavit must allege a factual basis for a finding of extrajudicial bias. (***Navastar Financial Corp. v. Pinnacle Truck Sales & Corp.***, 4:03-CV-2089. (M.D.Pa. 05/20/2005).) District Courts within the 3rd Circuit continue to erroneously cite ***United States v. Grinnell Corp.***, supra. (***U.S. v. Enigwe***, 155 F.Supp.2d 365 (E.D.Pa. 06/08/2001).)

The 4th Circuit continues to cite a 1987 case requiring extrajudicial bias -- ***In re Beard***, 811 F.2d 818, 826-27 (4th Cir. 1987). (***Assa'ad-Faltas v. President of the University of South Carolina***, No. 07-1949 (4th Cir. 08/21/2008); ***In re Barefoot***, 325 Fed.Appx. 255 (4th Cir. 05/28/2009); ***In re O"Hara***, 77 F.3d 470 (4th Cir. 02/28/1996); ***In re Bast***, 91 F.3d 128 (4th Cir. 07/11/1996); ***In re Debrew***, 97 F.3d 1446 (4th Cir. 10/01/1996).) And a 1984 case -- ***Shaw v. Martin***,733 F.2d 304, 308 (4th Cir.), cert. denied, 469 U.S. 873, 83 L. Ed. 2d 159, 105 S. Ct. 230 (1984). (***Hause v. Witkowski***, 98 F.3d 1334 (4th Cir. 10/16/1996).) See also ***In re Vincent***, 68 F.3d 463 (4th Cir. 10/13/1995).

The 5th Circuit continues to require extrajudicial bias. "Motions brought under §144 and 28 U.S.C.§455 are substantively similar and both

require recusal only for "personal, extra-judicial bias." (***United States v. MMR Corp.***, 954 F.2d 1040, at 1045-1046 (5th Cir. 1992). (***United States v. Gonzalez***, No. 08-20333 (5th Cir. 09/17/2009).) District Courts within the 5th Circuit continue to erroneously cite ***United States v. Grinnell Corp.***, supra. (***Crawford v. United States Dep't of Homeland Security***, No. 06-11163 (5th Cir. 08/16/2007); ***Miller v. Barnhart***, 211 Fed.Appx. 303 (5th Cir. 12/27/2006).)

The 6th Circuit continues to require extrajudicial bias. ***United States v. Jamieson***, 427 F.3d 394, 405 (6th Cir. 2005). (***Creusere v. Weaver***, No. 07-5859 (6th Cir. 01/26/2009); ***Youn v. Track, Inc.***, No. 2003 Fed App. 0087P (6th Cir. 03/24/2003).) See also ***Reed v. Rhodes***, 179 F.3d 453, 468 (6th Cir. 1999) and ***EBI-Detroit, Inc. v. City of Detroit***, No. 07-1391 (6th Cir. 05/22/2008).) District Courts within the 6th Circuit continue to erroneously cite ***United States v. Grinnell Corp.***, supra. (***Taylor Acquisitions, L.L.C. v. City of Taylor***, 313 Fed.Appx. 826 (6th Cir. 02/19/2009).)

The 9th Circuit continues to require extrajudicial bias. (***United States v. Weaver***, 97 F.3d 1463 (9th Cir. 09/13/1996); **Oltarzewski v. Martinez**, 50 F.3d 17 (9th Cir. 03/03/1995).) District Courts within the 9th Circuit continue to erroneously cite ***United States v. Grinnell Corp.***, supra. (***In re Thomason***, No. ID-09-1000-MoDH (9th Cir. 06/26/2009); ***In re Michaels***, No. CC-08-1078-PaDMo (9th Cir. 02/27/2009); ***In re Keahey***, No. WW-08-1151-PaJuKa (9th Cir. 11/03/2008).) But the 9th

Circuit has gotten it right some of the time. (***United States v. Bogard***, 51 F.3d 282 (9th Cir. 03/22/1995).)

The 11th Circuit has a difficult time understanding that this Court does not require extrajudicial bias. (***Dinkins v. Leavitt***, No. 08-10911 (11th Cir. 11/05/2008); ***Gilbert v. United States Dep't of Justice***, No. 07-10488 (11th Cir. 10/18/2007); ***In re Windsor***, No. 09-14018-A (11th Cir. 9/17/2009.)

Since a judge's fate usually resides in his or her own hands, the need for a strong statement from this Court is especially important. It seems that this Court needs to make it clear to the lower courts that extrajudicial bias is not a requirement for recusal.

Bias is bias. Discrimination has no boundaries. If one discriminates against a person of another race, color, creed, age, or gender, it doesn't matter what caused it. It's the bias that is wrong.

It makes no sense for judges to be allowed to be biased as long as the bias is restricted to their courtroom...the one place that bias is not supposed to exist.

VI. THE DECISIONS OF THE LOWER COURTS VIOLATE THE PETITIONER'S BASIC CONSTITUTIONAL RIGHTS.

The Eleventh Circuit's claim that there was no indication of bias in the underlying action obliterated the Petitioner's Constitutional rights.

> "As said by the Supreme Court in ***Berger v. United States***, supra,"* * * the tribunals of the county shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free, to use the words of the section, from any `bias or prejudice' that might disturb the normal course of impartial judgment." In ***In re Murchison***, supra, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942, the Supreme Court said "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."
>
> One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case. (***In re Murchison***, supra.) If this basic principle is violated, the judgment must be reversed. (***In re Murchison***, supra; ***Berger v. United States***, supra.)

Because Judge Duffey was prejudiced for his fellow judge, this meant that the Petitioner had to be wrong. Not just wrong, but evil and financially and mentally incapably wrong: "Scurrilous and irresponsible."

The Petitioner imagines that Judge Duffey would have said the same thing defending Alcee Hastings, John Pickering, Samuel Chase, West Hughes Humphrey, Mark W. Delahay, Charles

Swain, Robert W. Archibald, George W. English, Harold Louderback, Halsted L. Ritter, Harry Claiborne, Walter Nixon, and Samuel B. Kent.

When the Petitioner had the misfortune of landing in Judge Duffey's court due to an unfair system that inflicts the same judge again and again on pro se parties, Judge Duffey's bias never missed a beat. He used his position to shield his neighbor from answering the ethical, legal, and criminal charges made against her by falsely claiming he could be impartial with the Petitioner.

VII. THIS CASE PRESENTS AN ISSUE OF VITAL IMPORTANCE TO ALL CITIZENS.

The Constitution guarantees citizens a fair and impartial judge. These are nice words, but this is not the reality experienced by the Petitioner.

Every person "has a constitutional and statutory right to an impartial and fair judge at all stages of the proceeding." (*Liteky v. U.S.*, 510 US 540 (1994).

Unless this Court clarifies what constitutes bias in a recusal situation, the courts will continue to deprive some citizens of their rights.

Relatively few denials of motions for recusal are appealed because attorneys are unwilling to risk their careers by taking action against judges. This makes clarification by this Court even more important. The Petitioner is filing this Petition pro se because he was unable to find an attorney in

Atlanta who was willing to file a civil action against a federal judge. Every attorney contacted feared reprisals.

This is a very important issue of the most basic of Constitutional rights.

VIII. THIS WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION, AND THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS. ADEQUATE RELIEF CANNOT BE OBTAINED FROM ANY OTHER COURT.

Windsor filed motions for recusal in the District Court. (Pet.App. 116.) Judge Duffey denied them and did not allow the Clerk of the Court to file the latest one that Windsor presented. Judge Duffey is hopelessly biased against Windsor, and no relief is available from him.

Windsor filed a petition for writ of mandamus to disqualify Judge Duffey with the Eleventh Circuit, and they claimed there was nothing wrong with Judge Duffey calling Windsor "scurrilous and irresponsible" in a previous civil action. (Pet.App Volume 3.) They also falsely claimed that a judge's participation in a prior action is not "extra-judicial" and that a judge's bias for a friend is not "extra-judicial." Windsor has found that the judges of the Eleventh Circuit who have handled his actions have routinely ignored the facts and the law to shield Judge Evans and Judge Duffey from indictment and

impeachment. So, relief cannot be obtained from the Eleventh Circuit.

Windsor is pro se, and he is interpreting ***Marbury v. Madison***, 1 Cranch 137, 175 when it says "it must be shown to be an exercise of appellate jurisdiction" to mean that Windsor must show that this is in essence an appeal. Windsor believes it qualifies as he attempted to have Judge Duffey disqualified at both the District Court and Eleventh Circuit. Windsor has further read that the recusal of a judge can only be handled through mandamus.

Windsor respectfully submits that there is nothing that qualifies as "exceptional circumstances" more than a biased, corrupt federal judge.

Windsor is attempting to avoid financial and personal devastation by stopping these judges from forcing him to file bankruptcy.

CONCLUSION

Under the circumstances, disqualification is the only remedy that will promote the public's faith in the integrity and fairness of the federal judicial system, prompt other judges to handle motions for recusal properly, restore impartiality to the parties in the judicial process, and secure the relief that the Petitioner deserves.

For all of the above reasons, the Petitioner now respectfully prays that this Court grant a Writ of Mandamus to order the lower courts to disqualify Judge Duffey from presiding in any matters involving the Petitioner. Judge Duffey is currently presiding in Civil Actions 1:09-CV-02027-WSD and 1:09-CV-01543-WSD. All orders should be set aside. This Court should make it clear that judges may not call parties evil and then claim to be impartial. This Court should make it clear to lower courts that extrajudicial bias is not required in recusal; the perception of reasonable people of the appearance of bias necessitates recusal if there is any chance that the party will not receive a fair trial.

If possible, all cases involving Windsor should be transferred to another circuit where the judges will not be friends of Judge Evans or Judge Duffey. It is especially difficult to be impartial when it involves a long-time friend, neighbor, and co-worker. Windsor has filed motions requesting intercircuit transfers, but these have thus far been ignored. Windsor will be submitting a separate Petition for Writ of Mandamus to Disqualify Judge Evans.

FINAL NOTE FROM THE PETITIONER

May it please the Court.

How in the world do I as a pro se party get the attention of the United States Supreme Court? How can words on a page convince you that I am the one telling the truth, and the judges are among those telling lies? All I can say is that every word I have sworn to is the truth, the whole truth, and nothing but the truth. I have sworn to everything under penalty of perjury. If an impartial judge will grant an evidentiary hearing, I am absolutely confident that I can prove everything to the satisfaction of the judge. I have been trying to get an evidentiary hearing for four years!

I have been completely unsuccessful in efforts to get ANYONE to care about the truth. Not the judges, the U.S. Attorney, the FBI, or Congress. (See Pet.App.77-85.)

In 2009, I wrote to the Presiding Judges of the Northern District of Georgia and the Eleventh Circuit asking for a conference of some type, and I was ignored. I filed a Motion for Judicial Intervention asking these judges, the Supreme Court, and the House and Senate Judiciary Committees to do something, but only the Supreme Court replied to say that it was unable to consider a letter and motion in a district court.

I sent detailed information to the FBI, the District Attorney, and the United States Attorney.

The District Attorney referred me to the FBI. The FBI said $1,000,000 was not a big enough deal for them to get involved. The United States Attorney simply ignored it.

I have now written to every member of the House and Senate Judiciary Committees, and only Senator Arlen Specter replied by referring the letter to the two senators from Georgia. Their only response was that impeachment is a House matter.

After learning that there is no civil lawsuit allowed for perjury, and after none of the authorities responded, I filed the underlying lawsuit against Judge Evans, Maid, and their attorneys under Rule 60(d) for fraud upon the court and RICO with perjury as one of the predicate acts cited. In the Verified Action in MIST-2, I detailed thousands of false statements, identified hundreds of violations of criminal statutes (predicate acts for RICO), and referenced all of the proof about which I have sworn under penalty of perjury before a notary.

I had high hopes that another judge would finally step in and end this nightmare. Instead, Judge Evans' next-door neighbor was assigned the case after he shielded her from a deposition two months before. Judge Duffey immediately began working for Judge Evans and against me.

And then the Eleventh Circuit has joined the act.

I have experienced legal and judicial abuse on steroids. Thus far, this is a case that indicates that

it can be absolutely impossible to find justice in the judicial system in America.

but Judge Evans did lie and made as many as 200 false statements in orders, and she has obstructed justice. She did it all intentionally. Her rulings were not based upon the facts or the law. I believe Judge Duffey and the judges of the Eleventh Circuit are covering up for her. I have no doubt that I can prove all of this to a jury.

As hard as it may be for fellow federal judges to accept that a peer has committed serious judicial misconduct, I pray that personal feelings and doubt can be put aside to review the evidence because there has been a grave miscarriage of justice.

In accordance with 28 U.S.C.§1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

Respectfully submitted this 3 day of ~~October~~ NOVEMBER, 2010,

William M. Windsor
Pro Se